STATE OF MICHIGAN

COURT OF APPEALS

MARVIN DAVIS,

Plaintiff-Appellee,

v

LARNELLE SIMPSON and KENNETH MOTT,

Defendants-Appellants.

UNPUBLISHED
September 23, 2010

No. 292959
Wayne Circuit Court
LC No. 08-016249-NO

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendants Larnelle Simpson and Kenneth Mott appeal as of right the trial court's order that denied their motion for summary disposition pursuant to MCR 2.116(C)(7) on grounds that a question of fact existed whether governmental immunity applied. MCR 7.203(A)(1). We affirm.[1]

I. FACTS

Plaintiff is a prisoner housed by the Michigan Department of Corrections. In December 2007, he was incarcerated at Ryan Correctional Facility in Detroit, a level-two or minimum-security prison. Defendants Simpson and Mott worked at the prison as a corrections officer and as a residence unit officer, respectively. Simpson's principal job duty is transporting prisoners to and from nearby hospitals. According to Simpson, all prisoners are placed in level-five restraints when transported after duty hours in the metropolitan area. Level-five restraints include leg irons, belly chain, handcuffs, and black box. The black box is placed over the handcuffs to prevent prisoners from tampering with the handcuffs' lock. The leg irons and black box are connected to the belly chain. The leg irons substantially limit a prisoner's mobility, where a prisoner can only take "baby steps."

In the late evening of December 11, 2007, Simpson and Mott transported plaintiff to Detroit Receiving Hospital after he was injured during a prison incident. The transport van was a large passenger van with several rows of seats in the rear. This area is accessible by two doors on the side of the van. When these doors are open, a foot well becomes accessible, which is used for

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

egress and ingress. A running board is just beneath the foot well on the van's exterior to further aid egress and ingress. According to plaintiff, the floor of the van was two to four feet from the ground.

Upon arriving at the hospital, Simpson parked the van in an enclosed area near the hospital's emergency department. Plaintiff claimed that Mott assisted him out of the van at this time. According to Simpson, the typical disembarkation process included one officer opening one door, and the other officer opening the other door. As the prisoner approached the exit, the officers would reach in and grab the prisoner's arms and help him down to the ground. Mott indicated that he generally helped the prisoners "by reaching underneath the person's elbow with both hands and [he] actually help[s] them scoot forward and put their feet down on the running board." Mott also explained that leg irons are never removed during transport.

The hospital staff treated plaintiff by x-raying and suturing his hand. Plaintiff indicated that Mott helped him back into the van. They returned to the prison health department at approximately midnight. At this time weather conditions were severe with freezing rain that made the ground slick. According to plaintiff, Mott opened the door and ordered him outside. Plaintiff asked Mott for assistance, but Mott told him to hurry up, because Mott wanted to go home. Plaintiff slipped and fell as he tried to disembark: "I landed on my bottom and kind of sideways to where my bottom hit the ground, but my back hit the . . . back of the van which would actually be the opening of the door." Mott tried to catch plaintiff as plaintiff fell but Mott was unable to do so.[2]

The trial court denied defendants' motion for summary disposition, and this appeal ensued.

II. ANALYSIS

The sole question on appeal is whether the trial court erroneously denied defendants' motion for summary disposition, an issue we review de novo. *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999). Defendants are correction officers at the prison and therefore are afforded immunity under MCL 691.1407(2) so long as they are (1) acting (or that they reasonably believe they are acting) within the scope of their authority, (2) the governmental agency is engaged in the exercise or discharge of a governmental function, and (3) their conduct does not amount to gross negligence that is the proximate cause of plaintiff's injury. The instant appeal implicates gross negligence, and summary disposition is properly granted only where reasonable minds could not have reached different conclusions with regard to whether defendants' conduct amounted to the statutorily defined gross negligence. *Haberl v Rose*, 225 Mich App 254, 265; 570 NW2d 664 (1997). "Gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). The gross negligence standard suggests "almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks." *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004).

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[2]Simpson and Mott provided a somewhat different version of events, but because we must view the evidence in a light most favorable to plaintiff, we accept his deposition testimony as true when any conflict arises.

We agree with the trial court that a genuine issue of material fact existed whether defendants' conduct amounted to gross negligence. As noted in the Facts section, plaintiff testified that Mott opened up the door to the van, and rather than following the customary practice of assisting the prisoner out of the van (and according to Simpson, have both officers present for the disembarkment), Mott told him to get out. Plaintiff testified that his response to the request was that "I asked him could he help me and he didn't say nothing [sic] and he just told me to get out. And I—he told me to hurry up because he was trying to get home." Defendants claimed that they were attempting to render assistance to plaintiff, and *their testimony* suggests that their conduct constituted ordinary negligence, at best. Nevertheless, they also admitted that leg irons limited plaintiff's mobility, that plaintiff required assistance in accessing the van, that the freezing rain created a hazardous condition when they returned to the prison after midnight, and the practice of having both officers at the side of the van to assist was a safety measure to avoid accidental falls. Notably, Simpson observed ice on the running board of the van, and there is a question as to what caused the plaintiff's fall.

If the jury accepts plaintiff's testimony that defendants did nothing while plaintiff attempted to exit the van (while asking for help) and that he subsequently fell and was injured, and finds that defendants' procedure was to assist the prisoner out of the van so that no injury would occur, then the jury could reasonably conclude that defendants' conduct amounted to gross negligence. See *Tallman v Markstrom*, 180 Mich App 141, 142, 144; 446 NW2d 618 (1989). We conclude that the trial court properly denied defendants' motion for summary disposition, where material facts are disputed and reasonable minds could reach different conclusions whether defendants' conduct amounted to gross negligence. *Haberl*, 225 Mich App at 265.

We also reject defendants' argument that their conduct was not the proximate cause of plaintiff's injuries. The alleged gross negligence must be "the one most immediate, efficient, and direct cause of the injury or damage" to be the proximate cause of an injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Generally, when the material facts are disputed, proximate cause is a factual question for the jury. *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002). We conclude that a genuine issue of material fact exists on this point as well, as it is possible that the ice on the running board, or defendants' failure to assist plaintiff out of the van or plaintiff's clumsiness and failure to wait, was the proximate cause of plaintiff's injuries. Once again, the material facts are in dispute, and reasonable minds could differ concerning the most immediate, efficient, and direct cause of plaintiff's injuries; thus, defendants were not entitled to summary disposition as to whether defendants' conduct was the proximate cause of plaintiff's injuries. *Haberl*, 225 Mich App at 265; *Nichols*, 253 Mich App at 532.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray